

**REMARKS**

Claims 1-4, 7-9, 11, 22 and 23 were pending in the present application. Claims 5-6, 10, and 12-21 were cancelled. By virtue of this response, Claims 1 and 22 were amended to correct typographical errors, and new claims 24-26 have been added. Accordingly, claims 1-4, 7-9, 11, and 22-26 are currently under consideration. Amendment and cancellation of certain claims is not to be construed as a dedication to the public of any of the subject matter of the claims as previously presented. No new matter has been added.

**Concerning the Information Disclosure Statement**

The first three documents on page 2 of the IDS submitted 19 April 2004 were requested by the Office Action. The Gradel and Wilkinson documents were presented in an IDS for an application to which priority is now claimed. The Pilling document is submitted herewith.

Applicant respectfully believes that this submission satisfies the request for resubmission of these documents.

**Concerning the Specification**

The specification was amended to correct the claim of priority. Please see the specification regarding this updated priority claim.

**Rejections under 35 USC § 112**

Claim 7 is rejected under 35 USC § 112, first paragraph, as allegedly failing to comply with the written description requirement because the "specification does not include 'transect plane'".

Applicant respectfully notes that the claims do not state a "transect plane", but rather a "position that transects the plane of coaptation." The plane of coaptation is shown and described throughout the specification.

**Rejections under 35 USC § 102(b)**

Claims 7, 8, and 11 are rejected under 35 USC § 102(b) as allegedly being anticipated by Boughten et al. (US. Patent No. 5,014,407) ("Boughten").

In response, Applicant respectfully submits that Boughten fails to disclose "positioning tissue...between the first and second jaw members", as stated in our independent Claim 7. Boughten distends the tube 46 on the outside of the members, as shown in Boughten's Figs. 4a and 4b, not "between the first and second jaw members" as required by the claims. Boughten's device is also not configured to position the tube between the jaw members.

Furthermore, Boughten is not an "approximating device" as stated in the claims, but is actually the exact opposite: a distending device.

The claims repeatedly state the limitation of "tissue" which is never disclosed or inferred by Boughten. Further, Boughten especially does not have a "tissue engaging rod".


Applicant respectfully submits that the claims are therefore not anticipated by Boughten.

### CONCLUSION

In view of the above, each of the presently pending claims in this application is believed to be in condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejections and pass this application to issue. If it is determined that a telephone conference would expedite the prosecution of this application, the Examiner is invited to telephone the undersigned at the number given below.

In the event the appropriate fee and/or petition is not filed herewith and the U.S. Patent and Trademark Office determines that an extension and/or other relief is required, Applicant petitions for any required relief including extensions of time and authorize the Commissioner to charge the cost of such petitions and/or other fees due in connection with this filing to Deposit Account No. 50-3973 referencing Attorney Docket No. FGRTNZ00602. However, the Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

Respectfully submitted,



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